

NEIL ABERCROMBIE
GOVERNOR



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INFORMATIONAL SUBMITTAL

DATE: May 8, 2014
TO: Catherine Payne, Chairperson
FROM: Tom Hutton, Executive Director
AGENDA ITEM: Update on 2014 Legislative Session

I. DESCRIPTION

Status update for the 2014 Legislative Session.

II. UPDATE

The 2014 Legislative Session opened on January 15 and ended on May 1, 2014. The Legislature passed eight bills relating to, affecting, or of interest to charter schools. The Governor has already signed two of these bills into law.

Several charter school measures died in conference, including all bills related to charter school facilities. This may be partly due to the Council on Revenues' reduced revenue projection it made in March, which created a significant challenge to all departments and agencies seeking additional funds. However, the Supplemental Appropriations Bill, or HB1700 CD1, includes \$800,000 for the Commission that is in addition to, not taken out of, the per-pupil funds. While this does not equate to the Commission's full operating costs (as up to \$560,000 will need to be transferred from the per-pupil allocation to the Commission), this is a step toward a Commission budget that is a separate appropriation from the per-pupil funds. Because the budget worksheets that accompany the final draft of this bill are not yet available, more details about budget will be provided in a future update.

The Legislature passed the charter school "clean-up" bill, HB1745 CD1. If signed into law, the measure would take effect on July 1, 2014. Highlights of the bill are as follows:

- Clarifies that the Commission's appropriation will be made separate from, and in addition to, the appropriation made to charter schools, beginning with the 2015-2016 fiscal year.

- Authorizes the Commission to assess fees. The Commission is required to adopt administrative rules to assess fees, provided that the initial fee amount may be set if the Commission holds a public hearing.
- Clarifies the status of an approved charter applicant and establishes guidelines for the start-up period. Charter applicants are not State entities until a “pre-opening charter school” is established through the execution of a charter contract. The Commission may require an approved charter applicant to meet pre-contracting criteria before entering into a charter contract. The Commission is required to establish pre-opening criteria, and the charter contract of a pre-opening charter school that fails to meet the criteria shall be void. An approved charter applicant that fails to meet pre-contracting criteria or a pre-opening charter school that fails to meet pre-opening criteria will be considered an approved charter applicant that has withdrawn its application, and an approved charter applicant that withdraws its application shall not be allowed to execute a charter contract unless it reapplies and is approved.
- Clarifies that the Commission shall determine staff wages, hours, benefits, and other terms and conditions for employment in accordance with Chapter 89C, Hawaii Revised Statutes (“HRS”). Designates the Commission as an “appropriate authority” to make adjustments for its excluded employees.
- Clarifies that a “nonprofit organization” is federally recognized as a tax-exempt organization, but not limited to section 501(c)(3) of the Internal Revenue Code, and is registered to do business in this state.
- Clarifies that the Commission and governing boards have the authority to execute contracts.
- Sets limits on charter school employees, former employees, relatives of employees or former employees, vendors, and contractors serving on the governing board of that charter school. Governing board chairs shall not be employees, former employees, relatives of employees or former employees, vendors, or contractors of the charter school overseen by the governing board unless granted an exemption by the Commission.
- Prohibits a governing board member from serving on more than two governing boards simultaneously.
- Removes the requirement that governing boards post meeting agendas and minutes on the Commission’s website. Governing boards are required to post meeting agendas and minutes on the charter school’s website.
- Authorizes the Commission to reconstitute the governing board of a charter school under exigent circumstances, such as unlawful or unethical conduct by governing board members or charter school personnel or other conditions calling into serious question the governing board’s ability to fulfill its fiduciary duties.
- Authorizes the Commission to direct a governing board and a charter school to take appropriate action to immediately address serious health and safety issues.
- Exempts charter schools and the Commission from the guidelines for the administration and use of federal funds set forth in HRS §302A-1401.
- Designates the Executive Director as the “department head” of the Commission for purposes of statutory delegation of authority.
- Allows the Commission to make adjustments in charter school allocations based on noncompliance with charter contracts.
- Provides the Commission with the discretion to allow a charter school to submit a financial review in lieu of an independent financial audit.

- Clarifies that charter schools are open to any student residing in the state who is entitled to attend a Department of Education (“DOE”) school. This can be construed to mean that any regular education students being served by a charter school must be in grades K-12.
- Requires the Commission to submit a report to the Legislature on the Commission’s staffing and operational expenditures.

The Legislature also passed SB2331 HD1, and the Governor enacted it into law as Act 39, effective April 25, 2014. Act 39 clarifies provisions related to charter schools in the statute for the Hawaii Teacher Standards Board (“HTSB”), including:

- Requiring that one teacher member of HTSB be engaged in teaching at a charter school at the time of appointment;
- Subject to Board of Education (“BOE”) policy, requiring the Commission to review and approve qualifications related to an individual’s vocational, technical, or career pathway education-related experience that the Commission deems necessary for a permit;
- Subject to BOE policy, authorizing the Commission to waive the requirement of a bachelor’s degree to teach in a vocation, technical, or career pathway education program;
- Subject to BOE policy, allowing the Commission to define extraordinary situations for purposes of licensing;
- Requiring the Commission to annually report data to HTSB regarding the supply of, and demand for, teachers in charter schools;
- Requiring the Commission to submit an annual report to HTSB documenting the number of emergency hires in charter schools, the reasons and duration of employment for the emergency hires, and individual progress toward licensing; and
- Requiring charter schools to hire licensed teachers, except in emergency situations.

Other bills impacting charter schools to some extent that the Legislature passed and transmitted to the Governor include:

- HB1796 SD1, Relating to Education: This measure would prohibit the use of seclusion and reduce and prevent the use of restraint in public schools, including charter schools, beginning with the 2016-2017 school year. This measure would require the Board of Education to establish a policy regarding the use of restraint in public schools and require public schools to ensure that staff members who use restraint are trained and recertified on a periodic basis.
- HB2243 CD1, Relating to Criminal History Record Checks: This measure would allow qualified entities, including charter schools and the Commission, to conduct state and national fingerprint-based criminal history record checks on volunteers, beginning on July 2, 2014. Law already allows charter schools and the Commission to conduct such checks on employees, teacher trainees, prospective employees, and prospective teacher trainees.
- SB2134, Relating to Education: This measure would amend various sections of HRS Chapter 302A to comply with the federal Individuals with Disabilities Education Act, including changing the maximum age of “exceptional children” (which is likely to intend to mean “students with disabilities”) from 20 to 22 years of age. This measure would impact special education in all public schools and is effective upon its approval.

- SB2768 CD1, Relating to Kindergarten: The Governor signed this measure into law, which would make kindergarten mandatory for children who will be at least five years of age on July 31 of the school year and requires that charter schools participate in the kindergarten program. It is unlikely this bill is intended to require all charter schools to offer kindergarten, although all charter elementary schools do so; rather, the intent is likely to require those charter schools that offer kindergarten to follow the age requirements set forth in HRS Chapter 302A.
- SB2288 CD1, Relating to Education: This measure would, among other things, clarify that the definition of “charter school” in HRS Chapter 302A is the same as in HRS Chapter 302D.

Below is a list of bills that died in conference on which the Commission previously submitted testimony at some point during the session:

- HB1551 SD2, Relating to Education: This measure would have established an Office of Hawaiian Education within the DOE.
- HB1676 HD1 SD1, Relating to Early Learning: This measure would have authorized the Executive Office on Early Learning to enter into agreements with charter schools to use available classrooms as public preschool classrooms statewide.
- HB1971 HD2 SD1, Relating to Labor: This measure would have allowed charter school employees to fully participate in certain employee benefits and additional supports and incentives offered to DOE employees, subject to supplemental collective bargaining agreements, and would have provided funding for such benefits for next fiscal year.
- HB2576 HD1 SD2, Relating to Education: This measure would have established a special fund for charter school facilities, established a tax credit for those who contribute to charter school facilities, and appropriated funds to the charter school special fund.
- SB2516 SD2 HD1, Relating to Facilities Funding for Charter Schools: This measure would have appropriated general funds to support the Commission’s facilities pilot project by providing the next round of funding for charter school facilities.
- SB2517 SD2 HD1, Relating to Charter Schools: This measure would have authorized the Commission to request the issuance of general obligation bonds and allocate the proceeds to charter school facilities needs.